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## TENDENCIES TOWARD MINISTERIAL RESPONSIBILITY IN GERMANY

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When asked, "How far do you regard the present constitutional system of the Empire final?" Bismarck is said to have replied, "Final it is not. Doubtless we shall pass through the stages which you in England have passed through. But it will be a slow, gradual process, and we cannot foresee the direction which development will take." That judgment expresses a strong belief in the evolution of constitutional government,—an evolution, moreover, which in general must follow the course of English political development, but which will doubtless unfold very slowly and reflect in its details the influences of special circumstances and local tendencies. To the general propositions which the Iron Chancellor stated, the student of comparative political institutions must give assent. Ever more clearly are we coming to see that the changes in the forms and organization of governments follow an orderly, developmental sequence.

The belated evolution of parliamentary government in Germany is entirely explicable from the peculiar centrifugal forces which prevented absolutism, in the seventeenth and eighteenth centuries, from accomplishing its great mission of national unity. That work was left to the nineteenth century. The results of the Revolutionary and Napoleonic era were; first, the widespread acceptance of the most advanced doctrines of constitutionalism and the adoption, in most of the smaller states of Germany, of constitutions more or less closely modeled on the French Charte; and, second, the dissemination of the idea of German national unity as the only secure protection against foreign aggression.

Though urged together as concomitant principles of the Liberal cause, these two dynamic ideas were essentially incompatible. The nature of constitutionalism, culminating as it does in democracy, is dispersive, centrifugal, disintegrative. Unification could only be accomplished by the absolutist agencies of iron and blood. The priority between these two movements belonged logically to that for national unity. The constitutional propaganda undoubtedly interfered with, and probably somewhat delayed, the achievement of a united Germany; but the dominant note throughout the period from Jena to Sedan was national unity. This movement has left a heritage of crass materialism, a worship of force, which constitutes one of the striking characteristics of present-day Germany. The remarkable transformation in the nation's *Weltanschauung*, in the *Zeitgeist*, since Kant and Fichte, Goethe and Schiller expressed the lofty idealism of the Germany of a century ago, must be reckoned with in any attempt to gauge the strength of liberal tendencies to-day. This spirit of aggressive materialism, personified in its completest sense in Bismarck, has dominated external and internal politics, as it has all commercial and industrial activity, and has gone far toward crushing out the sentiments of liberty and freedom, of self-government and popular rights, which, for the very reason that they were in large measure doctrinaire, flourished in the philosophic atmosphere of the early nineteenth century. There is no doubt that the cult of force conduces to the strengthening of the monarchical principle.

The constitutional movement of the first half of the nineteenth century, on the other hand, has very much of a fictitious character. It is essentially premature; it represents the efforts of the advanced Liberal section of opinion to force the nation into a phase of constitutional evolution for which it was not yet ready. The formal copying of the institutions of England and France had the effect merely of setting in motion powerful forces of reaction. All the fundamental laws which date from this epoch contain definite articles on ministerial responsibility, impeachment, countersignature and interpellations. They afford ample basis, so far as constitutional prescription goes, for the establishment

of responsible ministerial government. They satisfied the demands of radical publicists like Rotteck, Welcker and Robert von Mohl, whose works on constitutional government were one of the principal agencies for the spread of French and English ideas. And yet up to the present moment in no state of Germany, and much less in the Empire, have ministers recognized a real or effective responsibility to anyone but the monarch.

The work of national unity and the reactionary tendencies incited by the premature adoption of the outward forms of parliamentary government have checked the development of liberal institutions. But of recent years the indications of a transition to a new phase of government have become increasingly numerous and remarkable. These signs of change may be grouped into three general classes: first, the tremendous upheaval of discontent at what is called the 'personal régime' in the Empire; second, the widespread demand that an effective ministerial responsibility to the Reichstag be imposed upon the Chancellor, and the suggestions of such a change actually taking place; third, the democratization, and agitation for democratization, of the electorates in the several states.

Discontent at the personal rule of the Kaiser has been occasioned by his oft-repeated assertions of divine right, by the obtrusion of his personality into every sphere of private as well as public activity, by his direct participation in elections and aggressive opposition to Social Democracy, by his flamboyant and indiscreet utterances on foreign affairs, and finally by the lack of success which has attended his efforts in personally directing Germany's foreign policy. There is no doubt that the feeling of dissatisfaction and protest at the personal régime is almost universal. No party or section of political opinion defends the Kaiser against the chidings of the nation. But it does not follow from this that the desire for parliamentary government of the English or French type is equally general. Twenty years ago the Kaiser "dropped the pilot," and has insisted ever since on steering the ship of state himself. His chancellors have been mere personal secretaries with very little power of initiative. To do the Kaiser's bidding has been their almost sole function. Having taken the

helm, he has been compelled to bear the responsibility. In descending into the arena of party contests, he has forfeited the protection which the throne affords. The mystical doctrine of royal irresponsibility cannot be pleaded by him who chooses to be his own first minister. William I more wisely exercised his autocratic power through a Grand Vizier. Bismarck, in taking over the effective direction of governmental policy, was able to shield his "*alter Herr*" from the popular attacks and partisan hostility, to which William II has subjected himself by undertaking on every occasion the personal direction of government. The purely formal responsibility which the Chancellor has assumed for his Imperial master's acts has deceived no one. The reaction against the personal régime might have been predicted as soon as the principles governing the new reign were discerned. This protest and discontent at arbitrary personal government does not, however, imply a desire for parliamentary ministerial responsibility. It may mean, and among large sections of the people does mean, nothing more than a demand for a return to Bismarckian traditions,—a restoration to the Chancellorship of the functions of a Grand Vizier.

Thus far it is evident that the national revolt against the personal régime has produced no perceptible effect upon the mind of the Emperor. His latest appointment to the Chancellorship can in no wise be interpreted as indicating a willingness to return to the practice and methods of his grandfather. Whether we view Prince von Bülow's retirement as occasioned by his defeat in the Reichstag or as the consequence of the withdrawal of Imperial favor, there is no doubt that von Bethmann-Hollweg occupies no essentially different position than his predecessor. The Kaiser, in insisting on himself playing the star rôle in every act of the political drama, condemns the rest of the caste to a dead level of mediocrity. It is difficult to say how far this refusal to listen to the loud expressions of popular disapproval may go without causing a decided increase in the demand for a more radical solution. As yet, however, the most influential section, though probably not the numerical majority, of the people are opposed to the establishment of parliamentary government.

The second class of indications of impending change more definitely point in the direction of ministerial responsibility. Indeed they have been widely hailed as insuring a speedy transition to parliamentary government. Their importance, however, we are convinced has been greatly exaggerated. Article 17 of the Imperial Constitution, it must be remembered, provides that "The ordinances and decrees of the Emperor shall be issued in the name of the Empire, and require for their validity the countersignature of the Imperial Chancellor, who thereby undertakes the responsibility for them." This article was not included in the original draft; it constituted no part of the constitution of the North German Confederation, out of which the Empire grew. It was incorporated as an amendment, on the motion of Bennigsen, and is copied almost literally from the Prussian Constitution. It has no essential or organic relation to the rest of the instrument. Together with the similar articles in the constitutions of the several states, it has been the subject of a vast amount of discussion. A veritable flood of academic literature has dealt with the nature of the ministerial responsibility which the various constitutions prescribe. Is it a civil, a criminal, a disciplinary, a constitutional, a political, or a moral responsibility? In characteristic German fashion the war of the monographs has been waged.

Especially futile is the discussion over the responsibility of the Chancellor, inasmuch as the article of the Imperial Constitution embodies inherent inconsistencies, which do not exist in the case of the states. To whom, in the first place, is the Chancellor responsible? It cannot be the Kaiser, for the intention of the article is manifestly to relieve the Emperor of a responsibility which the Chancellor undertakes. It might perhaps be interpreted as a responsibility to the Bundesrath. But since this body is representative of the confederated governments, and the Prussian government possesses the hegemony to such an extent that it practically controls its decisions, this resolves itself into a responsibility to the Prussian government, or, in other words, to the King of Prussia. Moreover, the Constitution makes the Chancellor the presiding officer of the Bundesrath, though not, as

Chancellor, a member of the body. Can it be supposed that it was the intention to require the Chancellor to moderate the proceedings of the Bundesrath, and at the same time to be ready on every occasion to defend his acts, and those of his master, against attack on the floor of that Chamber? Furthermore the language of the article would imply, copied as it is directly from Article 44 of the Prussian Constitution, that the responsibility of the Chancellor is owed to the Reichstag, the representative body of the nation. But the difficulty here is that the Chancellor, as Chancellor, does not even have the *entrée* to the Reichstag. His presence there is as Prussian Plenipotentiary to the Bundesrath. There has grown up, it is true, a practice of interpellating the Chancellor upon every line of governmental policy, and he feels impelled to defend his own and the Emperor's acts before the bar of the people's representatives. But this is an entirely extra-legal development, and rests upon the fact that he combines in his person the several offices of Chancellor, Minister President of Prussia, and Prussian Plenipotentiary to the Bundesrath.

A close consideration of the constitutional functions of Kaiser and Chancellor will reveal the difficulty in all the proposals in Social Democratic and Radical resolutions which look toward making this formal constitutional responsibility a reality. The Kaiser does not occupy the same relative position in the *Reich* that the several monarchs do in the member-states. The title which he at first held, "Bundespraesidium," better describes his functions and powers than that of Kaiser. He is invested with the full command of the army, the appointment of Imperial officers, and the duty of promulgating the laws. Farther than this his powers are confined to executing the laws, and the ordinances which the Bundesrath decrees. As Kaiser he has no share in the initiation of legislation. The great mass of William II's power, even in Imperial affairs, comes from his being King of Prussia, and as such controlling the Prussian delegation in the Bundesrath. Likewise the Chancellor's office is always attached to that of Minister President of Prussia and head of the Prussian department of Foreign Affairs, and he is also always a member

of the Prussian delegation in the Bundesrath. Over the Prussian Government the Reichstag has no control, and the full realization of the responsibility enjoined in Article 17 would result in the severance of the Chancellorship from the Prussian offices. Were the Reichstag able to enforce a responsibility upon the Chancellor for all the ordinances and decrees of the Kaiser, or even for all the acts of the Kaiser, as Kaiser, it would amount to very little. The King of Prussia would appoint some one else Minister President of Prussia, through whom he would continue to control the Prussian delegation in the Bundesrath and thereby exercise a determining voice in most of the decisions of that body. The Reichstag possesses very little positive power; its importance is chiefly negative. It may block legislation; discuss at length governmental policy; and affords an excellent, because unrestricted, opportunity to air radical and socialistic opinions. But it is not by the Constitution vested with sufficient power to make it an effective instrument of control. This is especially true since the Reichstag's control over the budget, the power over supply, which has been in England the most important instrumentality for establishing parliamentary domination, cannot be used as a sanction for enforcing ministerial responsibility. The experience of the "Conflict period" in Prussia is determining in this respect. The consensus of German juristic opinion denies to any legislative body the right to deadlock the wheels of government in order to enforce its control over the Executive, and would justify the latter, should such an attempt be made, in carrying on the government without the warrant of legislative enactment. It is clear that the obstacles to an effective enforcement of a responsibility by the Reichstag upon the Chancellor are well-nigh insuperable; and were he to become thoroughly responsible, his importance would immediately dwindle to insignificance.

It may be suggested that an amendment to the Constitution would easily remove these difficulties. Might not the fundamental law be revised to conform to the requirements of true parliamentary government? Just here we encounter one of those fundamental social facts which determine the special direction which constitutional evolution shall take in any country. The feder-



alism in the government is merely the political aspect of a particularism ingrained in the social structure of Germany, which results from the imperfect achievement of the work of absolutism. In Bavaria, in Würtemberg, in Baden, in Posen, in Hanover, in Alsace-Lorraine, there exist local sentiments of nationality which would even now balk any attempt to establish for the whole of Germany an effective ministerial system, responsible to the Reichstag. The people in each of the smaller states look with alarm at any proposal to enhance the already predominant position of Prussia. The Bundesrath is the last bulwark of particularism, and this must needs be swept away before a true parliamentary system can be established. In time this may be possible, but at present the centrifugal tendency seems if any thing on the increase.

It is, moreover, not merely a *territorial* particularism, but also a heterogeneity of classes and social strata which must be overcome. That homogeneity of citizenship, which is the *sine qua non* of any truly efficient system of parliamentary government is still lacking. Political party lines in Germany coincide altogether too closely with the social, religious and class lines of cleavage to permit the normal functioning of the ministerial system, involving as it does the alternation of parties in power. Not only does ministerial responsibility require for its proper working the bi-party system; it is even more important that the parties be constructed on vertical lines which cut across the social and class lines of separation. It is not merely the group system that offers a serious impediment to the establishment of government by ministries responsible to the Reichstag; that exists in France, and constitutes, it is true, an obstacle, but not an insuperable obstacle. It is rather the fact that party lines coincide with the lines of social cleavage that offers the chief difficulty. This makes party lines extremely rigid. That passing of voters to and fro from one party to the other, which secures the healthy alternation of parties in power, would be impossible at present in Germany. Once in power a party would retain control until gradually the economic development might produce a change.

The truth is that the Constitution of the Empire is as truthful an expression, as is possible, of the actual forces which underlie

the government. The Kaiser represents the principle of unity. He is the incarnation of the sentiment which, springing up in the War of Liberation, grew in strength and power until it reached fruition in the memorable scene at Versailles in 1871. The Bundesrath is the representative of the sentiment of particularism, which hitherto has successfully checked the farther growth of the sentiment of consolidated nationality. Both of these institutions, moreover, embody the principle of the hegemony of the Prussian Government. The Reichstag alone represents the German people, the popular element in the state. The clamor for a more definite responsibility of the Chancellor to the Reichstag does not take account of the fact that to effect this it would be necessary to seriously disturb the balance of forces which the Constitution now safeguards, and would arouse opposition from altogether unexpected quarters.

The third, and in many respects the most significant, class of signs of the times in Germany relate to the democratization of the basis of representative government. The agitation for ministerial responsibility to the Reichstag is due to the fact that this body is elected by direct elections, universal suffrage and secret ballot. Were it not for the gross inequalities in the distribution of seats, the Reichstag would be a model of a popular, representative body. Its competence is, however, too limited to make it an effective organ of government control. Is it not reasonable to expect that, as soon as the same liberal principles are applied to the electorates of the member-states, the demand for ministerial responsibility will there also become urgent? It is, therefore, highly interesting that a general movement for electoral reform in the member-states of the Empire is under way. In the smaller German states important reforms have already been accomplished. In Baden, the most liberal of the South German states, universal manhood suffrage for the lower chamber of the Landtag has existed since 1869, but the elections were indirect. In 1904, direct elections were introduced. At the same time the upper chamber was liberalized by the inclusion of representatives of Chambers of Commerce and the municipalities. Würtemberg, in 1906, reformed her lower chamber by eliminating the privileged mem-

bers, "knights" and "clergymen," and substituting members chosen by proportional representation. In the same year, Bavaria passed from indirect to direct elections. Saxony, in 1909, repealed the three-class electoral system, which since 1896 had disgraced her Constitution, and introduced in its place a system of plural voting. Every man is given a direct secret vote, but a second and a third vote are given those who possess special property, educational, or professional qualifications. Far from ideal as this system appears, it is a great improvement. Oldenburg, in the same year, substituted universal manhood suffrage and direct elections for a suffrage based on tax-paying and indirect elections; and Saxe-Weimar substituted direct for indirect elections. Finally in the draft of a constitution for Alsace-Lorraine, which the Bundesrath has adopted within the past few weeks, provision is made for a bicameral legislature, of which the lower house is to be elected by universal suffrage.

The reform of the antiquated and ridiculous three-class electoral system in Prussia has long been vigorously agitated. This year the Government was finally brought to the point of introducing a measure which looked to its modification. So completely unsatisfactory was it, retaining as it did most of the objectionable features of the old system, that Social Democracy was at once thrown into a fever of such colossal demonstrations as Germany had never before witnessed. Cut to pieces by the lower chamber of the Landtag, and certain of rejection in the upper house, the Government was forced to withdraw it to avoid a more crushing defeat. The results of this experiment in giving a stone when the people have demanded bread are really startling, and ought to cause deep heart searchings in high quarters. Whether the entrenched powers of autocracy and beurocracy can be compelled to grant the popular demands is, of course, a question. The three-class system is the citadel of their powers; its abandonment would give the enemy possession of the entire fortress. A voluntary abnegation of the advantages which *Junkerthum* and *Beaurokratie* now enjoy is scarcely to be looked for. The application of some form of compulsion will probably be necessary. The Social Democrats would, of course, profit most largely

by a thorough-going reform of the electoral law; indeed, it is doubtful if any of the other parties would gain much. Even the Radicals cannot be expected, therefore, to view with the same eagerness a régime in which property is given no recognition whatever. The Clericals desire the secret ballot; the Liberals and Radicals would gain much from a redistribution of seats; but the Socialists alone sincerely, and without reservation, wish to abolish the ascendancy of property. Whether they can recruit allies from the Radicals depends upon how amenable they prove themselves, in the immediate future, to the influences which are working toward a revision of their intransigent program. So long as Bebel dominates Social Democracy, and insists upon the adherence to the uncompromising doctrinaireism hitherto enforced, there is little chance of gaining assistance from the *bourgeoisie*. But the signs of greatly increased strength in the Revisionist wing of the party, and the faltering admission by the old leaders that in certain circumstances a *practical* attitude may be justifiable, afford ground for hope. Unless a really effective alliance can be secured with the Radicals there is no reason to believe that a peaceful solution of the question is possible. Even with the entire Left united it is difficult to see how the forces of reaction can be dislodged without a resort to force. The indications from all by-elections to the Reichstag point to a greatly increased Socialist poll. How long can this tremendous human flood be restrained within the barriers of the Prussian Electoral Law? When it bursts its bonds will it not carry all before it? Already some of the Socialist leaders are willing to resort to that recently invented, and most dangerous, weapon, the general strike. The thorough discipline, which the demonstrations showed the Socialists to possess, gives good promise of their being able to use this instrument effectively. Were it once employed, the end might come quickly.

The Prussian Electoral question is not, as von Bethmann-Hollweg wishes to make it, a purely Prussian matter. Because of the predominance of the Prussian Government in the Bundesrath, through which it can practically nullify anything the Reichstag undertakes, any measure which tends toward liberalizing

the Prussian Government must have a vital interest for the whole of Germany. The democratization of Prussia would bring about the democratization of the Empire. Everything would be thrown into the melting-pot. The agrarian tariff would go; the Naval Act would be seriously cut down; even the army might not be beyond the reach of the party which is avowedly anti-militarist. It is in its connection with the Empire that this question of Prussian Electoral reform is of particular interest to us, for in the democratization of the Prussian Government probably is also to be found the key to the problem of ministerial responsibility in Germany.

Let us consider what the results of universal suffrage, direct elections, and the secret ballot in Prussia would be. The upper chamber of the Prussian Landtag does not possess the peculiar powers, nor occupy the same relative position of importance in the Prussian Government, as the Bundesrath. On the other hand, the Prussian House of Representatives is relatively a more powerful body than the Reichstag. Unembarrassed by the principle of federalism, and less subject to the evils of fractional parties, it is more than probable that a thoroughly popular chamber would be able to institute an effective control over the Prussian ministers. The Prussian Constitution already prescribes such a ministerial responsibility, and it would only be necessary to enforce it, perhaps, if resistance were attempted, by means of an impeachment-process, which the Constitution also provides for, but which would require an *Ausführungsgesetz*. The same course of development will doubtless take place in the smaller German states. It may even be expected that some of them will anticipate Prussia in this respect. But the introduction of ministerial responsibility in Prussia would transfer the ultimate control over the Prussian delegation in the Bundesrath from King to Landtag, as ministerial responsibility in the smaller states would result in popular control of their delegations. And, since the principal power of the Emperor springs from his being King of Prussia and thus being able to control that state's delegation, this change would very seriously reduce his power in Imperial affairs. In like manner, the Chancellor would no longer be Minister President of Prussia, or charged with the ad-

ministration of the Prussian Department of Foreign Affairs, whence issue instructions to the Prussian delegation in the Bundesrath. His powers would immediately shrivel up, and he would become merely the Kaiser's personal agent, and the moderator of the proceedings of the Bundesrath.

If we may suppose the existence of a thoroughly responsible and powerful Minister President in Prussia, supported by an able ministry, and possessed of the full confidence of the Prussian Landtag, it is evident that he would be in the position, which the King now occupies, to control the Prussian delegation in the Bundesrath; and, while that delegation does not constitute a majority of the entire body, such a Minister President would probably be able, as the Prussian Government is at present able, to secure sufficient support from some of the other states to afford him a majority on nearly all questions. This would be especially true if the same popular control had been established over the delegations of the other states in the Bundesrath. What would be the result under such circumstances? The Bundesrath would become the responsible agent of the Prussian Ministry, which, in turn, would be responsible to the Prussian Landtag. The Kaiser, and his personal agent, the Chancellor, would still be nominally vested with control over the army, the appointment to Imperial offices, and the execution of the laws of the Empire. But with the Bundesrath, the Reichstag and the Prussian House of Representatives, all combined in their attack upon autocracy, it could not be long before even this sphere of governmental activity would be brought under some kind of parliamentary control. Curiously enough, the Prussian Landtag, and not the Reichstag, in such a case would become the ultimate controlling power in the Empire. And, so long as the principles of federalism and Prussian hegemony are retained in the German Empire, no other result may be expected. The natural and logical order of evolution would seem to be the historical order, from individual state upward and not from Empire downward.